to any of its directors, officers, or employees any funds held in trust, except with respect to employee benefit plans in accordance with the exemptions found in section 408 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108).

(c) *Loans to fiduciary accounts.* A national bank may make a loan to a fiduciary account and may hold a security interest in assets of the account if the transaction is fair to the account and is not prohibited by applicable law.

(d) *Sales between fiduciary accounts.* A national bank may sell assets between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

(e) *Loans between fiduciary accounts.* A national bank may make a loan between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

§ 9.13 Custody of fiduciary assets.

(a) *Control of fiduciary assets.* A national bank shall place assets of fiduciary accounts in the joint custody or control of not fewer than two of the fiduciary officers or employees designated for that purpose by the board of directors. A national bank may maintain the investments of a fiduciary account off-premises, if consistent with applicable law and if the bank maintains adequate safeguards and controls.

(b) *Separation of fiduciary assets.* A national bank shall keep the assets of fiduciary accounts separate from the assets of the bank. A national bank shall keep the assets of each fiduciary account separate from all other accounts or shall identify the investments as the property of a particular account, except as provided in § 9.18.

§ 9.14 Deposit of securities with state authorities.

(a) *In general.* If state law requires corporations acting in a fiduciary capacity to deposit securities with state authorities for the protection of private or court trusts, then before a national bank acts as a private or court-appointed trustee in that state, it shall make a similar deposit with state authorities. If the state authorities refuse to accept the deposit, the bank shall deposit the securities with the Federal Reserve Bank of the district in which the national bank is located, to be held for the protection of private or court trusts to the same extent as if the securities had been deposited with state authorities.

(b) *Acting in a fiduciary capacity in more than one state.* If a national bank acts in a fiduciary capacity in more than one state, the bank may compute the amount of securities that are required to be deposited for each state on the basis of the amount of assets for which the bank is acting in a fiduciary capacity at offices located in that state. If state law requires a deposit of securities on a basis other than assets (*e.g.,* a requirement to deposit a fixed amount or an amount equal to a percentage of capital), the bank may compute the amount of deposit required in that state on a pro-rated basis, according to the proportion of fiduciary assets for which the bank is acting in a fiduciary capacity at offices located in that state.

[61 FR 68554, Dec. 30, 1996, as amended at 66 FR 34798, July 2, 2001]

§ 9.15 Fiduciary compensation.

(a) *Compensation of bank.* If the amount of a national bank's compensation for acting in a fiduciary capacity is not set or governed by applicable law, the bank may charge a reasonable fee for its services.

(b) *Compensation of co-fiduciary officers and employees.* A national bank may not permit any officer or employee to retain any compensation for acting as a co-fiduciary with the bank in the administration of a fiduciary account, except with the specific approval of the bank's board of directors.

§ 9.16 Receivership or voluntary liquidation of bank.

If the OCC appoints a receiver for an uninsured national bank, or if a national bank places itself in voluntary liquidation, the receiver or liquidating agent shall promptly close or transfer to a substitute fiduciary all fiduciary accounts, in accordance with OCC instructions and the orders of the court having jurisdiction.